IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

Rajasthan State Road Transport Corporation & another

Vs.

Gopal & another

S.B.CIVIL MISC. APPEAL NO.574/1994

Against the award dated 04.04.1994 made by the Motor Accidents Claims Tribunal, Sirohi in Claim Case No.49/1992.

Date of Judgment : 03.01.2007

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.B.S.Bhati, for the appellants
None present for the respondents

BY THE COURT:

This appeal has been preferred by the owners of the bus involved in accident against the award dated 04.04.1994 made by the Motor Accidents Claims Tribunal, Sirohi in Claim Case No.49/1992 awarding compensation in the sum of Rs.69,500/- together with interest at the rate of 12% per annum from the date of filing of claim application to the injured claimant-respondent No.1.

The appellants contend that the accident did not occur

from their vehicle in the manner alleged by the claimant who was himself responsible for the injuries and, therefore, no award of compensation could have been made against them.

Briefly put, the facts relevant for determination of the questions involved in this appeal are that the claimant-respondent No.1 alleged that on 08.12.1991 at about 10:15 a.m. at Bus stand, Abu Road, he met with an accident on being hit by a bus bearing registration No. RJ 14 P 0988 belonging to the appellant-Rajasthan State Road Transport Corporation (RSRTC) and driven rashly and negligently by non-applicant No.1 Abdul Rehman; that he sustained grievous injuries including fracture of his hip bone resulting in permanent disablement; and that he remained regularly under treatment from the date of accident at various hospitals at Abu Road and Palanpur with prolonged hospitalization. The claimant thus claimed compensation for treatment expenditure, loss of earning capacity, pains and sufferings, and disablement. The claimant pointed out that he was 45 years in age and was working as driver earning Rs.1,200/- per month at the time of accident but due to the disablement suffered, he would not be able to carry on with his job. The non-applicants in their reply, while denying the claim averments submitted that age of the claimant was not less than 50 years, that the assertion of income at Rs.1,200/- per

month was highly excessive, and that the allegations of grievous injuries and of permanent disablement were wrong and not supported by documentary evidence. In relation to the incident in question, it was averred that on the given date and time and at the given place, no accident was caused by the bus of the Roadways. It was further maintained that the non-applicant No.1 did not drive the bus rashly or negligently nor hit the claimant; but the claimant sustained injuries because of falling from an adjoining railway siding wall at the bus stand; and that the claimant was not hit from the front side of the bus. According to the non-applicants,-

> "इस प्रार्थना पत्र में दर्शाये तथ्य सर्वथा गलत होने से अस्वीकार है। दिनांक 8.12.91 को अप्रार्थी संख्या 1 ने रोडवेज की बस को लापरवाही व तेज गति से नहीं चलाया और न ही बस चलाते हुये प्रार्थी घायल के टक्कर मारी बल्कि प्रार्थी के रेल्वे से सटी दिवार पर से गिरने से चोटे आयी है। बस के आगे के भाग से प्रार्थी के कोई टक्कर नहीं हुयी है।"

And again,-

> "यह कि अप्रार्थी सं. 1 द्वारा दिनांक 8.12.91 को समय 10.15 एएम पर आर.जे.14 -पी0988 को तेज रफतार व लापरवाही पूर्वक चलाकर दुर्घटना कारित नहीं की है और न ही प्रार्थी के बस से टक्कर मारी है जिससे प्रार्थी अप्रार्थीगण से मुआवजा की राशि रूपये 1,35000/- पाने का अधिकारी नहीं है।"

After framing of necessary issues and taking evidence, the Tribunal found the accident having occurred for omission of care and caution on the part of both, the victim and the bus driver. The Tribunal also noticed from the evidence adduced

by the claimant that he was 45 years of age and was earning as driver, and now due to the injuries was rendered unfit to carry on the job of driver. Taking the loss of earning capacity at Rs.500/- per month and adding Rs.200/- per month being the loss due to dependency on others; and with application of multiplier of 15, the Tribunal assessed the loss of earning capacity at Rs.1,26,000/-. The Tribunal also allowed Rs.6,000/- towards loss of income during the treatment period and further Rs.7,000/- towards treatment expenditure. In this manner, the Tribunal assessed total loss for the claimant at Rs.1,39,000/- and allowed him compensation at 50% i.e. in the sum of Rs.69,500/- with interest at the rate of 12% per annum from the date of filing of claim application.

Assailing the award aforesaid, it has been strenuously contended by learned counsel for the appellants that the claimant has totally failed to establish any negligence on the part of the bus driver; that the claimant's version in his evidence has been different than that stated in the claim application; that testimony of the bus driver and so also eye-witness to the accident, Mahesh Kumar Dave makes it clear that there was no fault in the bus driver in causing the accident; and the Tribunal has been in error in deciding issue No.1 against the appellant. Learned counsel further assailed the quantum of compensation awarded with the submissions

that the claimant has failed to show loss of earning capacity and, therefore, the loss assessed by the Tribunal stands much on the higher side. Learned counsel further contended that admittedly the claimant had received an amount of Rs.19,500/- from his insurer on his personal insurance and such amount received by him ought to have been deducted while calculating the loss.

It may be pointed out that in this case, before the record of the Tribunal was transmitted to this Court, Part D, C and B thereof had already been weeded out. Learned counsel for the appellants has supplied photostat of the certified copies of the statements of the witnesses examined before the Tribunal and so also of the disablement certificate filed by the claimant.

Having given a thoughtful consideration to the submissions of learned counsel for the appellants and having examined the material available on record, this Court is clearly of opinion that this appeal remains bereft of substance and deserves to be dismissed.

So far the finding on responsibility towards accident is concerned, in the claim application the claimant has not pleaded very specifically about the portion and side of the bus hitting him and has only averred that he was hit by the bus in question driven rashly and negligently; and true it is that the claimant Gopal has stated in his examination-in-chief that he

was hit by the front wheel of the bus whereas in his cross-examination he has admitted that front wheel did not hit him but he received injuries from the body of the bus. However, on comprehension of the evidence available on record, including the testimony of bus driver, NAW-1 Abdul Rehman and that of traffic controller of the appellant, NAW-2 Mahesh Kumar Dave, the fact that injured claimant did receive grievous injuries from the bus in question remains a fact undeniable.

The bus driver Abdul Rehman has stated that when he started on 08.12.1991 from Abu Road with the bus RJ 14 P 0988 for Baroda, Gopal (claimant) and Mujubar Rehman were standing on the railway boundary; that the rear wheel of the bus came close to them; then whether Gopal fell down or what happened was not known but he fell on the rear side bumper wherefrom he received the injuries. The bus driver has stated in his cross-examination that before starting the vehicle he had talked to Gopal who thereafter climbed up the wall. He has also admitted that the claimant received injuries only from the roadways bus. The bus driver has stated,-

> "गाड़ी रवाना करने से पहले मैंने गोपाल से बातें की थी, तब गोपाल दिवाल व जाली पर चढ गया था, मुजुबर रहमान भी चढ़ा था।"

And that, -

> "यह बात सही है कि चोट रोडवेज की बस से ही लगी । गोपाल दिवाल से बस पर गिरा था। यह बात सही है कि गोपाल ड्राईवर है।"

NAW-2 Mahesh Kumar Dave has gone rather a step further and has alleged that bus driver Abdul Rehman asked the injured to give way and then Gopal fell from the wall and the rear side bumper of the bus touched Gopal while the bus was on curvation. According to NAW-2 Mahesh Kumar Dave,-

> "बडौदा के लिए आबूरोड बस स्टेण्ड पर रास्ता एकतरफा बनाया हुआ है, गाडी धीरे धीरे बाहर निकल रही थी, उस समय रेल्वे की दिवाल पर लोहे की जाली लगी हुई थी उस पर गोपाल व एक अन्य मुसलमान जो टैक्सी ड्राईवर था, दिवाल पर चढे हुए थे।
>
> चालक अब्दुल रहमान द्वारा उनको हटने के लिए कहा, बस आगे निकल चुकी थी, पीछे के भाग पर गोपाल दिवाल से गिरा, तब बस का पीछे का बंपर गोपाल के टच होता हुआ निकला, बस गोल घुमी हुई थी, जिससे चालक पीछे का हिस्सा नहीं देख सकता था।"

The statements aforesaid leave no manner of doubt that the location and position of the injured was definitely known to the bus driver while the bus was taken past him; and that injuries were received by the claimant only from the bus in question. Merely because the claimant has stated in his examination-in-chief about his having been hit by the front wheel of the bus, other relevant facts and circumstances including the admission of the non-applicants themselves cannot be removed out of consideration altogether. The claimant has clarified in his cross-examination that it was not the front wheel of the driver side of the bus that came in his

contact; but that he received injuries from the body of the bus. In fact, he has maintained that he was squeezed between the wall and the bus.

Learned Judge of the Tribunal has taken into comprehension all the facts and circumstances available on record and with reference to the site plan has noticed that the positioning of the railway boundary wall was such that bus was required to take a large curvature while going out of the bus stand. While taking such a turn, it was definitely required of the bus driver to visualize the likely position of the rear side of the bus that would naturally go away from the alignment of the front wheel; and to guard against any mishap. Having examined the statement of the bus driver, this Court is satisfied that the bus driver was aware of the exact location of the injured Gopal and so also of his companion Mujubar Rehman inasmuch as the bus driver has specifically asserted to have even talked to Gopal before putting the bus in motion. It has been maintained by NAW-2 Mahesh Kumar Dave also that the driver Abdul Rehman asked the injured to give way. Taking the testimony of these two witnesses of the appellants on their face value, it is but apparent that at the relevant moment, precarious position of the claimant was directly known to the driver of the bus; and then it was definitely required of the driver to have taken further care and caution

while negotiating the adjoining wall and taking the bus in motion on the curvature.

In the overall comprehension of the facts available on record, this Court is satisfied that the claimant has not come out with any different story and rather the non-applicants have attempted to distort or conceal the material facts. Noteworthy it is that in the reply to the claim application, it was asserted that the bus did not hit the claimant and then it was obliquely stated that the bus did not hit him from the front. The facts divulged by NAW-1 and NAW-2 in their testimony are not as such compatible with the reply averments and varying stands taken by the non-applicants are indicative of their attempt to conceal the facts.

From the nature of injuries and disablement suffered by the injured claimant, at left shoulder and right hip, the suggestion of the non-applicants about his getting hurt by falling on the bus seems less probable than the submission of the claimant of his having been squeezed between the wall and the bus; and from the evidence available on record, preponderance leans in favour of the finding that the claimant was standing near the wall when the bus was taken past him; and getting no place to escape, he was sandwiched between the bus and the wall.

In any case, it is not in dispute that the claimant sustained injuries at the boundary wall and inside the bus stand of the appellants. The curved route required to be taken by the bus alongside the said boundary wall put the responsibility higher on the appellants to manage the bus stand and to regulate the movements of their vehicles properly and to guard against any mishap at such a place.

It has been contended that there has been no negligence on the part of bus driver and, therefore, the appellants ought to have been absolved of liability. Even if it be accepted that the claimant got hurt on falling down from the wall and coming in contact with the rear side of the bus, safe movement of the bus and preventing mishap was an integral part of duties and responsibilities of the appellant-RSRTC particularly for it being their own bus stand; and in the present case more particularly for the position of the injured being known to the bus driver while moving on.

With reference to the principles enunciated by the Hon'ble Apex Court in the case of S. Kaushnuma Begum & Ors. Vs. New India Assurance Co. Ltd.: AIR 2001 SC 485, on the strict liability rule developed in Rylands Vs. Fletcher [1861-73 All ER (reprint) 1], this Court in the case of Ali Khan Vs.Vijay Singh: 2006 RAR 102 has pointed out,-

> "It is, therefore, apparent that the principles emanating from the case of Rylands Vs. Fletcher of strict liability of the person using anything which could be classified as dangerous thing have been adopted to consider liability in torts if an injury is caused because of such use. The motor vehicles, vis-a-vis the human beings and their property, obviously answer to the description of 'dangerous thing' for the purpose of strict liability rule. Once the strict liability rule is applied, the other species of liability i.e. negligence, ceases to be the prime basis of cause of action and, instead, a person is responsible even for accidental harm even though he is not guilty of either wrongful intent or negligence. These are the cases where the defendant has a duty of "ensuring safety" to the others."

Mere assertion on the part of the respondents that there was no negligence on the part of the driver of the vehicle cannot be taken sufficient to absolve the Corporation of its liability, as argued on behalf of the appellant. In the case of Ali Khan (supra) this court has pointed out,-

> "A cause to maintain a claim for compensation arises not merely for rash and negligent driving of a motor vehicle but it arises out of the use of motor vehicle. Driving is one of the uses of motor vehicle and even if the act of driving itself is performed by the driver with all skill and caution, yet if the use of vehicle causes injury to a person or damage to a property, it cannot be said that merely because there was no fault in driving, no cause for compensation arises.
>
> The Hon'ble Supreme Court in Kaushnuma Begum's case (supra) has summed up the principle governing such cases thus,-

> "11. It must be noted that the jurisdiction of the Tribunal is not restricted to decide claims arising out of negligence in the use of motor vehicles. Negligence is only one of the species of the causes of action for making a claim for compensation in respect of accidents arising out of the use of motor vehicles. There are other premises for such cause of action."

Having examined the evidence available on record, this Court is satisfied that the non-applicants have omitted to take reasonable care and caution to guard against the incident and they cannot be absolved of their liability arising due to omission to ensure safety of the persons inside their bus stand.

Moreover, the Tribunal has not absolved the claimant altogether of his responsibility towards the accident and has found him having contributed equally. The Tribunal has rightly commented that the claimant too omitted to take reasonable caution and was indiscreet in standing near the wall at the time of movement of the bus. He was expected to know that at the time of its taking the turn, rear portion of the bus was likely to reach very near the wall and standing at that moment in such a position was an invitation to trouble. The Tribunal has held the claimant also negligent to the extent of 50% and has allowed compensation only at half of the assessed loss. The view taken by the Tribunal remains a reasonable one in the fact situation of the present case and calls for no interference.

So far quantification of compensation is concerned, it appears from the certificate Ex.132 issued by the General Hospital, Sirohi that the claimant has suffered permanent partial disablement to the extent of restriction of movement of his left shoulder and right hip and of shortening of right lower limb 2". It has been certified by the Junior Specialist of General Hospital, Sirohi thus,-

> "It is being certified that Shri Gopal s/o Shri Chhogaji Bhand, Age 45 Yr. is permanently partially handicapped following trauma. The clinical findings are as follows-
>
> (1) Lt. Shoulder – partial ankylosts of jt. Abduction 0° to 60° Flexion 0° to 60°
> Rotation normal
>
> (2) Rt. Hip. Flexion, abduction and internal rotation are markedly restricted.
> Flexion 0° to 70°. Abduction 10°. Int. rot. 5-10°
>
> (3) Shortening of Rt. lower limb 2 cm. "

The doctor concerned has also stated the opinion that the claimant was not fit for driving the vehicle. When the claimant was earning his livelihood as a driver and with shortening of right lower limb and restriction of shoulder and hip movement has been rendered unfit to carry on the job, the Tribunal cannot be said to have erred in allowing reasonable compensation taking the loss towards earning capacity to the

extent of about 40% of his monthly income at the time of accident and with application of multiplier of 15. In fact, the assessment as made by the Tribunal has fallen much short of reasonable amount of compensation inasmuch as despite noticing such grievous injuries and permanent partial disablement, the Tribunal has chosen not to award any amount towards pains and sufferings and so also towards loss of amenities of life.

Learned counsel has contended that an amount of Rs.19,500/- received by the claimant on account of his personal insurance ought to have been deducted while assessing compensation. The submission is meritless. Such amount received by the claimant from his personal insurance has no mitigating effect on the amount of compensation payable by the tortfeasor responsible for causing loss from a vehicle. Even otherwise, the amount awarded by the Tribunal has itself been on much lower side and had the claimant chosen to appear in this case and made submissions for enhancement, may be this Court would have considered the proposition of enhancing the award amount. However, the claimant having not appeared, no such enhancement is being considered but in any case, the amount awarded by the Tribunal remains rather on the lower side and calls for no interference.

As a result of the aforesaid, this appeal fails and is dismissed. The claimant having not appeared, there shall be no order as to costs.

(DINESH MAHESHWARI),J.

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